

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF ELECTRIC RATES OF	)	
LOUISVILLE GAS AND ELECTRIC COMPANY TO	)	CASE NO. 10320
IMPLEMENT A 25 PERCENT DISALLOWANCE OF	)	
TRIMBLE COUNTY UNIT NO. 1	)	

O R D E R

On October 23, 1989, the Residential Intervenors filed a petition for rehearing of the Commission's October 2, 1989 Order which approved a Settlement Agreement resolving the rate-making issues under investigation in this case. The Settlement Agreement requires Louisville Gas and Electric Company ("LG&E") to refund \$2.5 million to its electric customers within 60 days of October 2, 1989 and to reduce its electric rates by \$8.5 million annually on January 1, 1990. The Residential Intervenors, a coalition of low-income residential patrons and organizations which assist low-income households which are unable to pay their utility bills, consists of: Darlene Baker; Jacolyn Petty; the Fairdale Area Community Ministries, Inc.; the West Louisville Community Ministries, Inc.; the Sister Visitor Center; and the Inter-religious Coalition for Human Services, Inc.

The Residential Intervenors do not challenge the total ratepayer benefits flowing from the Settlement Agreement but, rather, propose an alternative allocation for the residential

share of the \$2.5 million refund. The Settlement Agreement, Article VII, states that,

The refund will be allocated among the various customer classes in accordance with the allocations determined by the Commission in the July 1, 1988 Order at page 87 in Case No. 10064. The amount to be refunded to each customer will be based upon the customer's historical consumption of kilowatt-hours of electricity for the twelve (12) month period, July 1, 1988 through June 30, 1989.

Residential Intervenor now propose that the refund allocable to the residential class, which amounts to 38.313 percent of \$2.5 million, or \$957,825, be diverted to the Louisville Community Foundation, Inc. for its administration of an energy assistance endowment fund for low-income customers. Residential Intervenor support their proposal with a survey, conducted by the Southern Research Corporation, which indicates that of 402 residential customers in Jefferson County, 70 percent favor the establishment of a fund to assist low-income residential customers.

On October 30, 1989, LG&E filed a response in opposition to the Residential Intervenor's petition for rehearing. LG&E notes that the refund arises from electric rates and is to be paid to electric customers in proportion to their historic electric consumption. However, the major hardships experienced by residential customers arise from gas bills. LG&E also states that although the coalition of entities filing the petition for rehearing have adopted the name "Residential Intervenor," they do not represent all residential customers of LG&E. The Residential Intervenor represent only the low-income residential customers in

Jefferson County, whereas LG&E's electric service territory includes nine counties.

LG&E argues that despite the empathy that the Commission may have for the ability of low-income residential customers to pay their gas bills, the Residential Intervenor's proposal constitutes prescribed discrimination. The diversion of money from residential electric customers to those residential gas customers unable to pay their bills is claimed to violate KRS 278.170(1) by creating an unreasonable preference or advantage and KRS 278.030(3) by creating an unreasonable classification within the residential customer class. LG&E further states that since the Residential Intervenor's survey was conducted prior to the August 23, 1989 hearing in this case, the survey does not qualify as "additional evidence that could not with reasonable diligence have been offered on the former hearing" as required by KRS 278.400. Finally, LG&E argues that the rate-making parameters set forth in KRS Chapter 278 preclude the Commission from relying on a public opinion survey in determining the allocation of a refund.

The Commission fully supports the goal of alleviating the hardships faced by low-income residential customers in paying their utility bills. In past decisions involving utilities in general, and LG&E in particular, the Commission has endeavored to establish revenue levels and adopt rate designs that fully recognize the problems confronting low-income residential customers. Despite these deeply rooted commitments by the Commission, its discretionary rate-making authority must be

exercised within the definitive constraints enacted by the Kentucky General Assembly.

The Commission hereby finds that the controlling statutes prohibit a division of the existing residential customer class into subclasses based on customer income levels. Despite the Commission's efforts to assure the affordability of utility service for every Kentuckian, the law will not sanction the taking of money from residential electric customers and redistributing it to benefit low-income residential gas customers. While the Residential Intervenors cannot be faulted for their sincere and innovative rehearing proposal, the goal of assisting low-income residential customers must be achieved through means that will pass statutory muster.

The Commission also recognizes that its discretion to consider additional evidence on rehearing is severely limited by KRS 278.400. The residential customer survey filed by the Residential Intervenors was conducted prior to the August 23, 1989 hearing in this case. Consequently, it does not qualify as newly discovered evidence to be considered on rehearing. The Commission notes that although this survey was financed by a grant from the Jefferson County Government,<sup>1</sup> Jefferson County neither joined in the Residential Intervenors' petition nor filed a supporting response. Likewise, no response was filed by the other intervenors who represent residential interests - the City of

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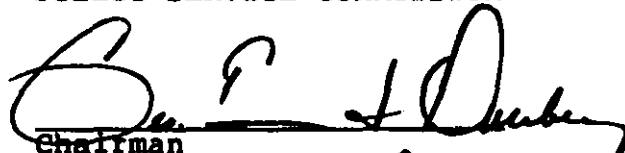
<sup>1</sup> Petition For Rehearing, page 4.

Louisville and the Attorney General's Office, Utility and Rate Intervention Division. Their collective silence on this issue is deafening.

IT IS THEREFORE ORDERED that the Residential Intervenors' petition for rehearing be and it hereby is denied.

Done at Frankfort, Kentucky, this 3rd day of November, 1989.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

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Commissioner

ATTEST:

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Executive Director